THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 34724 of 1997

DATED: 28-03-2007

Between:-

Y. Sudheer s/o Mallesham, aged about 40 years, 15-5-681, Afjal gunj, Hyderabad.

…PETITIONER

And

The Presiding Officer, Labour Court III Hyderabad and another.

…RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 34724 of 1997

O R D E R

Aggrieved by the award of the Labour Court-III, Hyderabad, in I.D. No. 763 of 1993, dated 31.01.1996, the present writ petition is filed.

The charges leveled against the petitioner are as under:

1. "For having failed to observe the rule of issue and start which is misconduct on your part vide Reg. 28 (VI) A of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963.
2. For having failed to collect the fare and issue tickets to a batch of two passengers who boarded your service at Nizamabad stage No.17 and alighting without tickets at Navipet Ex-stage No.19 which is serious mis-conduct on your part vide regulation No. 28 (VI) A and (XXXI) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963.
3. For having closed ticket tray numbers of all denominations up to Stage No.19 without issuing the tickets to the above said passengers with a *mala fide* intention to fraud to legitimate revenue of the Corporation which is serious misconduct on your part vide Regd.28 (XXXI) of A.P.S.R.T.C. Employees (Conduct) Act Reg. 1963.
4. For having absented for your duties while you were in Depot sphere without any intimation on the following dates: 21-6-1992 and 24-6-1992 which is misconduct on your part vide Reg. No. 28 (XXVII) of A.P.S.R.T.C. Employees (Conduct) Reg. 1963."

On the explanation, submitted by the petitioner, not being found satisfactory, an enquiry was held and the Enquiry Officer submitted his report holding that the charges leveled against the petitioner were proved. Thereafter the respondents, vide proceedings dated 06-05-1993, removed the petitioner from service. Aggrieved thereby, the petitioner approached the Labour Court.

Before the Labour Court the counsel for the petitioner filed a memo, under Section 11-A of the Industrial Disputes Act requesting that an award be passed on the basis of the material available on record and did not question the validity of the domestic enquiry. As such the domestic enquiry was held valid. Exs.M-1 to M-24 were marked with consent. The Labour Court held that charges 1 to 3 were proved and the charge No.4 was not established. On the quantum of punishment the Labour Court held that the loss which would have been caused to the Corporation, had the check not been exercised, was Rs. 10/- and it was not a case of conductor having collected the amounts from the passengers and not having issued tickets to them. The Labour Court held that the *mala fide* intention to pocket the revenue of the Corporation was absent and hence the punishment of removal from service was severe and disproportionate to the proved misconduct. The Labour Court held that since the petitioner had a clean record of service and there was no punishment imposed on him earlier, it would suffice if back wages were denied both as a measure

of punishment and on the principle of 'No work no pay' and the petitioner was directed to be reinstated into service with continuity of service and attendant benefits. Aggrieved thereby, the petitioner has approached this Court.

Sri S. Ramakrishna, learned counsel for the petitioner, would contend that since the Labour Court had itself come to the conclusion that there was no *mala fide* intention on the part of the petitioner in not issuing tickets, nor was it his intention to deprive the Corporation of the revenue due to it, the Labour Court had erred in denying the petitioner back-wages as a measure of punishment. Learned counsel would submit that the petitioner was deprived of being continued in service for no fault of his and, in such circumstances, the principle of 'no work no pay' was not applicable.

In **Karnataka State Road Transport Corporation Vs. B.S. Hullikatti**[1], the Supreme Court observed that it is the responsibility of bus conductors to collect correct fares from the passengers and deposit the same in the Corporation, that conductors act in a fiduciary capacity, it would be gross misconduct if knowingly they did not collect any fare or the correct amount of fare and that, in such cases, interference with the punishment of dismissal from service was a case of misplaced sympathy by the Labour Court. In **Regional Manager, Rajastan State Road Transport Corporation Vs. Ghanshyam Sharma**[2], the Supreme Court held that the proved acts amounted either to a

case of dishonesty or of gross negligence and bus conductors, who by their actions or inactions, cause financial loss to the Corporation, are not fit to be retained in service. In **V. Ramana Vs. A.P.S.R.T.C.**[3], the Supreme Court held that Courts/Tribunals should not interfere unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal.

While it is true that the Labour Court had come to the conclusion that there was no *mala fide* intent on the part of the petitioner to deprive the Corporation of its revenues, it must also not lost sight of that this Court, in Certiorari proceedings under Article 226 of the Constitution of India, does not sit in an appeal over the discretion exercised by the Labour Court under Section 11-A of the Industrial Disputes Act in interfering with the quantum of punishment imposed by the employer. In the present case the Labour Court has substituted the punishment of removal of service as imposed by the employer to one of denial of back wages. It is only when the discretion exercised by the Labour Court, with regards the nature and extent of punishment, is one which shocks the conscience of this Court would this Court be justified in interfering with the matter. In the present case, the order of the Labour Court, in denying back wages as a measure of punishment, cannot be said to be a punishment which shocks the conscience of this Court. The award of the Labour Court does not, therefore, necessitate interference. The writ petition fails and is, accordingly, dismissed. No costs.

RAMESH

RANGANATHAN,J
Dated: 28.03.2007
vp

[1] AIR 2001 SC 930
[2] 2002(1) LLJ 234
[3] AIR 2005 SC 3417